

SUMMONS
COURT OF COMMON PLEAS
LAKE COUNTY OHIO

PAUL SPIVAK

Plaintiff

VS.

Case Number: **21CV000417**

Judge PATRICK J. CONDON

CAPITAL ONE BANK USA NA

Defendant

To the following named DEFENDANT(S):

CAPITAL ONE BANK USA NA

1680 CAPITAL ONE DR

MCLEAN VA 22102

You have been named a Defendant in a complaint filed in the Lake County Court of Common Pleas, Lake County Courthouse, Painesville, Ohio. A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:

THOMAS L. BRUNN, JR. ESQ

THE BRUNN LAW FIRM CO. LPA

700 WEST SAINT CLAIR AVENUE 208 HOYT BLOCK BUILDING

CLEVELAND OH 44113

You are hereby summoned and required to do the following:

1. Within 28 days after service of this Summons upon you, serve a copy of an Answer to the Complaint on the Plaintiff's Attorney or on the Plaintiff, if he/she has no attorney of record;
2. Within 3 days after you serve the Plaintiff or the Plaintiff's Attorney, file an Answer with your original signature with the Lake County Clerk of Court.

Calculations of time are exclusive of the day of service.

If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the complaint.

Faith Andrews

Clerk, Court of Common Pleas

Lake County, Ohio

25 N. Park Place

Painesville OH 44077

By Shannon Luebking

Deputy Clerk

April 12, 2021

19-004-2021-0165000838-0165

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

FILED

2021 APR -9 PM 1:37

FAITH ANDREWS
LAKE CO. CLERK

PAUL SPIVAK
36800 Eagle Road
Willoughby Hills, OH 44094

CASE NO.:

21CV000417
PATRICK J. CONDON

Plaintiff,

vs.

) COMPLAINT
) (Jury Demand Endorsed Hereon)

CAPITAL ONE BANK (USA), N.A.
1680 Capital One Drive
McLean, Virginia 22102-3491

Defendant.

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Now comes Plaintiff, Paul Spivak ("Plaintiff"), by and through his undersigned counsel, and for his Complaint against Defendant, Capital One Bank (USA), N.A. ("Defendant"), states as follows:

FACTUAL ALLEGATIONS

1. Plaintiff is an individual who, at all times relevant herein, resides in Lake County, Ohio.
2. Defendant is a subsidiary corporation of Capital One Financial Corp. with its headquarters in Virginia which transacts business throughout the country, including in Lake County, Ohio.
3. Plaintiff states that, all times relevant herein, he has had two consumer credit cards [xxxx xxxx xxxx 5022] ("the Account") and xxxx xxxx xxxx 5963] with Defendant. Plaintiff further states that, prior to July, 2020, there had been no activity on the Account for months.

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4. Plaintiff states that, prior to July 1, 2020, Defendant would send monthly billing statements for the Account to Plaintiff's former business address at 34099 Melinz Parkway, Unit E, Eastlake, Ohio 44095.

5. Plaintiff states that, in early July, 2020, he notified Defendant of a change of address to 1148 E. 222nd Street, Euclid, Ohio 44117 in connection with both of his credit cards.

6. Plaintiff states that, on or about December 15, 2020, he received notice from Credit Karma that his credit score had been reduced by 80 points because he was delinquent in the timely payment of a \$60.00 charge (his email provider's automated annual fee) on the Account.

7. Plaintiff states that he immediately called Defendant, whose customer service representative advised that a late fee in the amount of \$38.00 plus interest in the amount of \$1.86 had also been assessed on the Account due to nonpayment of the Account balance.

8. Plaintiff states that, during this call, Defendant's representative also confessed that the Account's monthly billing statements it had been mailing to Plaintiff at the former Eastlake address over the prior months had been returned by the United States Postal Service.

9. Plaintiff states that, during this call, Defendant further advised that, although it had sent a replacement card to Plaintiff's former business address in October, 2020 (as his card was set to expire in November, 2020), it could see that the card had never been activated.

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10. Plaintiff states that, during his call with Defendant, he requested that the late charge and interest be removed from the Account, and that Defendant correct its inaccurate reporting to credit reporting agencies; however, Defendant refused both requests.

11. Plaintiff states that he further learned that the monthly billing statements for his second credit card were also being mailed to his former address despite his change of address notification; however, he was able to satisfy the outstanding balance before any late fees or interest were improperly charged in further detriment to his credit score.

COUNT ONE

12. Plaintiff hereby incorporates all of the facts, statements and allegations contained in paragraphs 1 through 11 as if fully rewritten herein.

13. Plaintiff is a “consumer” as defined in 15 U.S.C. §1681, *et seq.* (the Fair Credit Reporting Act or “FCRA”).

14. Plaintiff states that Defendant is a “furnisher” of information as defined by the FCRA.

15. Plaintiff states that Defendant has a duty to follow reasonable procedures to ensure the accuracy and completeness of information it reports to credit reporting agencies, and to reasonably investigate any consumer disputes regarding its furnishing of information to credit reporting agencies.

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16. Plaintiff states that Defendant negligently furnished inaccurate credit information to consumer reporting agencies and negligently failed to reasonably investigate Plaintiff's dispute regarding same.

17. Plaintiff states that Defendant's negligence factually and proximately caused him to suffer damages, including, but not limited to: a decreased credit rating, lost opportunities to enter into consumer credit transactions, denial of credit and aggravation, inconvenience, embarrassment, and frustration.

WHEREFORE, Plaintiff, Paul Spivak, demands judgment against Defendant, Capital One Bank (USA), N.A., in an amount in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) on Count One, in addition to attorney's fees and costs.

Respectfully submitted,

THE BRUNN LAW FIRM CO., L.P.A.

Thomas L. Brunn, Jr. (#0042453)
Alison D. Ramsey (#0078121)
COUNSEL FOR PLAINTIFF
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Cleveland, Ohio 44113-1230
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E-mail: brunn@brunnlawfirm.com

JURY DEMAND

A trial by jury is hereby demanded on behalf of Plaintiff herein.

Thomas L. Brunn, Jr. (#0042453)
COUNSEL FOR PLAINTIFF